specification as amended references a different deposit, ATCC 75949. Deposits 97525 and 75949 each contain the same cDNA. Applicants prefer to reference deposit 97525 because that deposit is packaged in phage lambda DNA, exactly as described in the specification as filed. Deposit 97525 is a deposit of material referenced in Applicant's filing, although the deposit was not made until after that filing. See *In re Lundak*, 773 F.2d 1216, 227 USPQ 90 (Fed. Cir. 1985).

The basis for the rejection is, the conclusion that,

> The specification does not recite clone TR2B packaged in a lambda gt11 phage, and therefore, the new matter rejection is maintained for the simple reason that there is no written description of clone TR2B packaged in a lambda gt11 phage in the specification. [Emphasis is added.]

Applicant understands the above rejection to be based entirely on the absence of any reference to deposit 97525 in the specification. The specification has been amended to add such a reference.

Applicant notes that the reference to clone 97525 (which is clone TR2B packaged in lambda gt11) is not new matter. In fact, it is clear from the specification as filed that the clone in question, TR2B, was packaged in lambda gt11. Example 1 (bottom of page 7) says,

> A fetal human brain cDNA library was constructed in lambda gt11. [Emphasis is added.]

Example 1 continues (page 8, lines 4-27),

> The cDNA was ligated to lambda gt11 DNA which had been pre-ligated, digested with 100-fold excess of *Eco*R1, and phosphatased using one unite of calf intestinal alkaline phosphatase per 70 mg of phage DNA....The DNA was packaged according to standard protocols and amplified....To screen the library, the phage was grown on Y1090 at a density of 100,000 per 150 mm plate...
>
> A prelimianry screening of the library....revealed a single positive clone...orginally designated TR1....
>
> Rescreening of the brain library with the...clone identified two two kilobase clones (Clones TR2A and TR2B).... [Emphasis is added.]

There simply can be no doubt that the library described above as well as the TR2B clone identified from that library, was packaged in phage lamda gt11. The rejection offers no rationale or analysis for the conclusion that clone TR2B was not packaged in phage lambda gt11 or that the clone TR2B was not referenced in the specification.

This case is no different from *In re Lundak*? See the MPEP 2406.02. If this issue remains in doubt, Applicant respectfully requests a phone interview as described below.

Paragraphs 4-5 reject claims 9-11 under 35 U.S.C. §112 ¶1. This amendment cancels those claims without prejudice to asserting them in a subsequent application claiming priority under 35 U.S.C. §120. The rejections do not apply to new claims 11 and 12, which lack any reference to hybridization. The rejection also does not apply to new claim 13, which is enabling for nucleic acid encoding a peptide that promotes the regeneration of a process of a central or peripheral neuron in vitro. See paragraph 5 of the office action at lines 2-5 distinguishing enablement of in vitro from in vivo regeneration.

Paragaraph 6 rejects claim 9 as indefinite regarding the stringency of hybridization. Claim 9 has been canceled.

Paragraph 7 rejects all claims as anticipated by Ullrich et al., a reference disclosing human nerve growth factor. The references of record make it clear that clone TR2B has nothing to do with human NGF. See Exhibit A to the Declaration of Stuart A. Lipton filed March 20, 1995, which is an article [Leifer et al., *Proc. Nat'l. Acad. Sci. USA* **90**:1546-1550 (1993)].

Request for Interview

In view of the long history of the prosecution of this case, Applicant requests the examiner for an opportunity to have an interview concerning any remaining issues.

Applicant submits that all of the claims are now in condition for allowance, which action is requested. Filed herewith is a check in payment of the excess claims fees required by the above amendments and Petition for Automatic Extension with the required fee. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: 3/1/00

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